

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10557 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

BHAVNAGAR MUNICIPAL CORPORATION

Versus

ANANTRAY G DAVE

Appearance:

MR HS MUNSHAW for Petitioner No. 1

MS KHYATI P HATHI for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 03/07/2001

ORAL JUDGEMENT

1. This petition, styled as a petition under Articles 226 and 227 of the Constitution, in reality, challenges the award of the Industrial Tribunal, Bhavnagar in Reference (I.T.) No.31 of 1991 whereby the petitioner- Municipal Corporation is ordered to grant promotion and consequential benefits to the respondent with effect from 23.11.1981. It is fairly conceded that,

even otherwise, the respondent was, by the petitioner's own order, actually promoted to the post of senior clerk with effect from 1.4.1983. The impugned award is dated 24.12.1998 and after filing of the petition challenging the same in December 1999, no injunction appears to have been obtained by the petitioner. Now, while arguing the petition in the middle of the year 2001, the learned counsel for the petitioner could not make a statement as to whether the impugned award was already implemented or not. It is stated in the affidavit of the respondent that in the year 2000 he was passing through the age of 70 years. The sequence of events speaks for itself.

2. It appears from the plain reading of the impugned award that the industrial dispute regarding the date of promotion of the respondent was referred to the Industrial Tribunal and after filing of the pleading of the parties, no oral evidence was led on either side. The respondent had applied for production of certain documentary evidence and despite an order thereon, the petitioner had failed to produce the relevant documents leading to the drawing of adverse inference against the petitioner. The borne of contention appears to be that the respondent was properly promoted in order of seniority and the juniors to him were not promoted before he was promoted. The anomaly arose because the petitioner showed the date of entry into service of the respondent as that of 4.11.1963 whereas the respondent had actually entered into service of the petitioner on 6.11.1957. After appreciating and considering the evidence, the Tribunal arrived at a finding of fact on the basis of a document at Exh.25 that the date of entry into service of the respondent was corrected from 4.11.1963 to 6.11.1957 by the petitioner itself. Thus, relying upon the earlier date of joining the service, the respondent was found to be eligible for promotion on 12.8.1971. However, the respondent having not taken any exception and not having raised an industrial dispute at that time, the Tribunal awarded the benefit of promotion from the date of the reference, i.e. 23.11.1981.

3. The learned counsel for the petitioner vehemently argued that the first date of appointment, i.e. 6.11.1957, was irrelevant for the purpose of counting seniority as the respondent was appointed and employed at that time as a sepoy and not in any clerical cadre. However, he could not point out any material on record which suggested even an attempt to prove such fact. Otherwise, the impugned award is found and held to be legal and proper and no error, much less an error apparent on the face of record, could be pointed out. In

this view and for the reasons discussed hereinabove, the Court finds no substance in this petition and, therefore, the same is rejected. Rule is discharged with no order as to costs.

4. It appears from the submissions of the learned counsel that the impugned award is not implemented and given effect to so far due to pendency of this petition. If that be so, it is expected that the petitioner shall implement the award and pay the due benefits to the respondent within a reasonable period of two months from today.

Sd/-

03.7.2001

(D.H.WAGHELA, J.)

(KMG Thilake)